

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

FORM #8

Do Not Mark In This Box  
Filing Date

FILED  
1991 JUN 27 PM 4:43  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

July 1, 1991

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

DATE EMERGENCY RULE WAS ORIGINALLY FILED: April 23, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: June 27, 1991

SERIES NUMBER OF RULE: 20 TITLE OF RULE: Conversion of Acute  
Care Beds To Skilled Nursing Care Beds

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

H. B. 2194, effective March 20, 1991, requires the agency to promulgate rules to permit certificate of need review for hospitals to convert acute care beds to skilled nursing beds. The emergency amendment is necessary to bring the rule into conformity with existing procedure and requirements for certificate of need review. The overall effect is to streamline agency procedure and reduce costs to hospitals.

Use Additional Sheets If Necessary.

  
Signature

Larry C. Fizer, Chairman

4.30

DATE: April 23, 1991

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1991 JUN 27 PM 4:43

FROM: Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE TITLE: Conversion Of Acute Care Beds To Skilled  
Nursing Care Beds

1. Date of filing: April 23, 1991

2. Statutory authority for promulgating the emergency  
rule: W. Va. Code §§16-2D-5(i); 16-2D-8

3. Date of filing of proposed legislative rule: April 23, 1991.

4. Does the emergency rule adopt new language or does it  
amend or repeal a current legislative rule?

New language  
\_\_\_\_\_  
\_\_\_\_\_

5. Has the same or similar emergency rule previously been  
filed and expired?

No  
\_\_\_\_\_  
\_\_\_\_\_

6. State, with particularity, those facts and circumstances  
which make the emergency rule necessary for the immediate  
preservation of public peace, health, safety or welfare.

See response to #8.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

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OFFICE OF THE VIRGINIA  
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N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Enrolled Committee Substitute for H. B. 2194 directs the agency to promulgate a rule to permit hospitals to convert excess acute care beds to skilled nursing beds which are medicare certified only. This rule permits hospitals to realize a cost savings with a related savings in the cost of health care provided by the hospital.

FILED

TITLE 65  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
SERIES 20

1991 JUN 27 PM 4: 43

Title: CONVERSION OF ACUTE CARE BEDS  
TO SKILLED NURSING CARE BEDS

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§ 65-20-1 General

1.1. Scope - This rule establishes the criteria and standards for certificate of need review for the conversion by hospitals of acute care beds to skilled nursing care beds which are medicare certified only by licensed hospitals as provided by W. Va. Code § 16-2D-5(i).

1.2. Authority - W. Va. Code §§ 16-2D-5(i), 16-2D-8.

1.3. Filing Date - \_\_\_\_\_.

1.4. Effective Date - \_\_\_\_\_.

§ 65-20-2 Introduction

This rule implements certain provisions of Enrolled Committee Substitute for House Bill 2194 which was passed by the Legislature on March 6, 1991, and was signed by the Governor on March 20, 1991. The bill created a new code section, W. Va. § Code 16-2D-5(i). This section authorizes

the Health Care Cost Review Authority to promulgate rules for the certificate of need review of applications for the conversion by hospitals of acute care beds to skilled care beds which are only medicare certified.

§ 65-20-3      Definitions

As used in these regulations, all terms have the same meaning as provided in the definition section of West Virginia Code section two, article two-d, chapter sixteen (§16-2D-2). Verbatim definitions, therefore, are not repeated here. Definitions set forth below amplify and clarify the statutory definitions or define terms not specifically set forth in the statute.

3.1.      Acute-care bed complement - The number of licensed hospital beds designated for acute care services exclusive of skilled nursing facility (SNF) and/or intermediate care facility (ICF) long-term care beds and personal care beds.

3.2.      DRG - Diagnostic related group - a classification system utilized by medicare to group patients with respect to resource use.

3.3.      Licensed bed capacity - The total number of hospital beds currently authorized for a hospital to operate by the Department of Health and Human Resources.

3.4. Skilled nursing bed - A long-term care bed designated as an SNF (skilled nursing facility bed) and certified as such under Medicare Title XVIII reimbursement.

§ 65-20-4 Review Procedures and Process Application

4.1. ~~Letters of intent and preapplication conference.~~ An application for a certificate of need shall be on forms approved by the board. The original and three (3) copies of the application must be submitted to the board. The application shall be verified under oath by the Chief Executive Officer.

4.2. Application required for Certificate of Need. Information required for the application shall include the following:

- (a) The identification of the applicant;
- (b) An authorization to pursue project;
- (c) A description of project;
- (d) A timetable for implementation of the project;
- (e) An analysis of the need for the project;
- (f) The policies for patient admission and provision of fully or partially uncompensated care;

- (g) An analysis of alternatives to the project;
- (h) An analysis of the project's relationship to the existing long term skilled care services in the area;
- (i) An analysis of the relationship of the project to the hospital's long-range plan;
- (j) An analysis of competitive factors;
- (k) The relationship of project to licensure, certification, accreditation and safety standards;
- (l) The availability of resources and manpower;
- (m) A preliminary financial feasibility study - the hospital must demonstrate that the proposed project is financially feasible and at a minimum provide the following:
  - (1) Statements of (a) revenues and expenses, (b) balance sheet, (c) statement of changes in fund balances, and (d) statement of cash flow for the last two years. Audited financial statements shall be submitted, if available;
  - (2) Preliminary financial feasibility study and cash flow statements for the proposed medicare skilled nursing care unit for a three year period including, at a minimum, pro forma financial statements for the current fiscal

year and three future years along with all assumptions upon which the projections were based.

(3) Impact analysis or study that demonstrates the effect of the proposed project on the hospital's overall financial condition.

~~4.3. Review for completeness.~~

~~(a) Within fifteen days of receipt of the application, the Health Care Cost Review Authority shall determine if the application is complete. The Health Care Cost Review Authority may request additional information. Declaration of an application as being complete means that sufficient information is in the application for the Health Care Cost Review Authority to make an informed decision, not that the information in the application warrants an approval of the application.~~

~~(b) The Health Care Cost Review Authority shall not accept an application from a hospital subject to the financial disclosure provisions of W. Va. Code, § 16-5F-1 et seq. until such facility has filed all reports required therein.~~

~~(c) Applications for the conversion of acute care beds to medicare skilled nursing care beds, shall be reviewed on an expedited application in cycles beginning every week. A sixty (60) day review cycle shall then begin on the applications in accordance with W. Va. Code, §§ 16-2D-7(g) and (h).~~

~~(d) If, after a review has begun, the Health Care Cost Review Authority requires additional information from the applicant, the applicant shall be provided at least ten days to submit the information and the Health Care Cost Review Authority shall, at the request of the applicant, extend the review period by ten days.~~

~~(e) The Health Care Cost Review Authority may conduct a hearing on the application in accordance with W. Va. Code, § 16-2D-7(l).~~

~~(f) A request for a public hearing during the review of an application must be in writing and received by the Health Care Cost Review Authority within thirty days of the date of notification of the beginning of the review as provided in W. Va. Code § 16-2D-7(g). The request shall be addressed to: General Counsel, West Virginia Health Care Cost Review Authority, Certificate of Need Program, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311.~~

~~(g) If a public hearing is not conducted during the review of an application, the Health Care Cost Review Authority shall close the review of the application on the thirty first day of the review. The Health Care Cost Review Authority may extend the file closing for good cause.~~

~~4.4. Holds and extensions on review periods.~~

~~(a) Holds at any time during a review of an application, the Health Care Cost Review Authority may grant an applicant's request that a hold be put~~

~~on the running of the review period on its application. An application under review and placed on hold for a period of more than one year shall be considered withdrawn, and a new letter of intent and application must be filed if the applicant desires to pursue the project.~~

~~(b) Extensions—If the Health Care Cost Review Authority finds it is not practicable to complete a review on an application within the time provided in Section 4.3(e) of these rules, the Health Care Cost Review Authority may extend the review process for a maximum of thirty days.~~

~~(c) File closing date extensions—If an application is put on hold or the review period is extended, the Health Care Cost Review Authority may extend the file closing date, and if the file closing date has passed when the review is extended or the hold is imposed, the Health Care Cost Review Authority may reopen the file and reestablish the file closing date.~~

~~(d) If a public rehearing is scheduled or if a file closing date is extended or reestablished, or if a hold or extension is put on a review, all affected persons shall be notified of the reasons.~~

#### ~~4.5. Reconsideration Requests~~

~~An affected person may request in writing a public hearing for purposes of reconsideration of the Health Care Cost Review Authority decision in accordance with W. Va. Code, § 16-2D-7(r). The request shall be addressed to~~

~~General Counsel, West Virginia Health Care Cost Review Authority, Certificate of Need Program, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311.~~

S65-20-5      Additional Information or Amendments to Application

5.1. After the review of an application has begun, the board may require the applicant to submit additional information. If no hearing is requested upon the application, and the applicant fails to submit the information within the time directed, or if the applicant submits a substantial amendment to its application, the board may:

(a) Extend the review cycle pursuant to the provisions of W. Va. C.S.R. 65-7-13;

(b) Enter an order closing the file ten (10) days from the entry of such order; or

(c) Withdraw the application from review.

5.2. The board may examine the extent of additional information provided or any amendment made by the applicant regarding the application currently under consideration by the board and its impact and determine the application to be a new proposal subject to a new review cycle. The board shall notify the applicant of any such determination, in writing, and further advise the applicant of the dates in the new review cycle. A notice shall also be published by the board pursuant to W. Va. C.S.R. 65-7-11.6.

§65-20-6      Application Withdrawal

6.1. An application under consideration by the board may be withdrawn by the applicant at any time prior to the issuance of a final decision and written findings. The withdrawal of such application shall be without prejudice.

6.2. A written notice withdrawing the application must be filed with the board before the issuance of a final decision.

§65-20-7      Batching of Applications

7.1. All applications shall be batched in the appropriate batching category pursuant to W. Va. C.S.R. §65-7-10.

7.2. Applications shall be reviewed in four annual cycles. On the first Friday of the months of February, May, August and November, the board shall collect by batching categories all applications determined to be complete since the previous cycle. The board shall then establish a ninety (90) day review cycle for each category. For consideration in any batch cycle, the application must be submitted no later than fifteen (15) days prior to the beginning of the batch.

8.1. Applicants must file with the board a letter of intent at least fifteen (15) days before the submission of a formal application. The letter of intent shall contain sufficient information to advise the board of the nature, scope, cost and timing of the project, as well as the location and name of the proposed applicant. Letters of intent shall be effective for one year from the date of their filing.

8.2. Upon receipt of a certificate of need application, the board shall determine whether the application is complete or whether additional information will be required. A declaration by the board that an application is complete means that there is sufficient information contained in the application for the board to make an informed decision. It does not mean that the approval of the application is warranted. Except in emergency situations that pose a threat to the public health, an application shall not be declared complete if:

(a) A long-range plan with a sufficient level of detail acceptable to the board and adopted by the applicant within the preceding five (5) years is not on file with the board;

(b) The applicant is a health care facility subject to the financial disclosure provisions of W. Va. Code §16-5F-1 et seq. or W. Va. Code §16-29B-1 et seq., and the health care facility has failed to file with the board all reports, records, data or other information required therein.

8.3. A determination of completeness must be made by the board within fifteen (15) days of its receipt of the application. If the board determines that the application is not complete, it shall request additional information or ask additional questions. Upon receipt of the additional information, the board shall have fifteen (15) days within which to determine if the application is complete. If the applicant fails to respond within one hundred eighty (180) days, the application shall be deemed withdrawn. If the applicant later desires to pursue the project, a new letter of intent and application must be filed.

8.4. Upon a determination by the board that an application is complete, the board shall publish a notice declaring its completeness in the Saturday Charleston newspapers, and the State Register. The notice shall, at a minimum, contain the following:

- (a) The name of the applicant;
- (b) A description of the proposed project;
- (c) The date the review cycle begins;
- (d) The last date for an affected person to request a public hearing;
- (e) The file closing date if no public hearing is requested;
- (f) The date upon which a decision will be issued by the board; and

(g) If applicable, that the application has been deemed potentially unnecessarily duplicative of other applications under review.

8.5. Once a determination of completeness has been made by the board and the appropriate notice published or mailed, the board shall provide a minimum of thirty (30) days from the beginning of the review period for affected persons to request a public hearing. A request for a public hearing must be in writing and shall be addressed to: General Counsel, West Virginia Health Care Cost Review Authority, Certificate of Need Program, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311.

8.6. The board shall hold a public hearing on an application if requested to do so by any affected person. The board may also hold a public hearing upon its own initiative.

8.7. If a public hearing is held on an application, and other applications have been determined to be potentially unnecessarily duplicative thereof, the public hearing shall be held on the application and all other applications that are potentially unnecessarily duplicative.

8.8. When a public hearing is scheduled to be conducted upon an application, the board shall, prior to the hearing, provide notice to all parties and publish notice in the Saturday Charleston newspapers and the State Register. The notice shall, at a minimum, contain the following;

(a) The name of the applicant;

- (b) A description of the proposed project;
- (c) The date of the public hearing;
- (d) The date of any prehearing conference; and

The hearing shall be conducted in accordance with the requirements for administrative hearings found in W. Va. Code §29A-5-1 et seq., and the provisions of 65 C.S.R. 11.

§65-20-9      Stays and Extensions of Review Periods

9.1. At any time during the board's review of an application, the board may grant the applicant's request that the running of the review period be stayed. An application under review and stayed at the request of the applicant for a total period exceeding one hundred eighty (180) days during any review period shall be considered withdrawn, and a new letter of intent and application must be filed if the applicant desires to pursue the project.

9.2. Upon a finding by the board that it would not be practicable to complete the review of an application within the time provided by this rule, the board may extend the review process for up to an additional thirty (30) days. All applications within the batching category that are in the same review cycle shall be similarly extended.

9.3. Situations which would make it impracticable for the board to complete its review within the time provided by this rule include, but are not limited to the following:

(a) A project is of such a comprehensive nature that to review it within the time provided by this rule would not do justice to the applicant or to the population which the proposed project would serve;

(b) Additional information has been requested from the applicant and the applicant has failed to provide the information to the board in the time frame directed by the board; and

(c) Weather conditions or other natural disasters have prevented the review process from taking place in a timely manner.

9.4. If the board grants a stay or issues an extension of the review period, it may also extend the file closing date. If the file closing date has already passed when the stay is imposed or the review is extended, the board may reopen the file and reestablish the file closing date.

9.5. If a public hearing is rescheduled, a file closing date is extended or reestablished, or a stay or extension is placed on a review, the board shall notify all affected persons of the reasons therefor.

Statement of Purpose: In order to ensure an appropriate supply of health services to the citizens of West Virginia while discouraging unnecessary duplication and high costs, the Health Care Cost Review Authority shall conduct a through public review and evaluation of proposed projects.

The goal of the Certificate of Need Program is to provide for the continued orderly development of the health care system in West Virginia through a public review of proposed applications that are evaluated in accordance with established Criteria and Standards. The purpose of the Criteria and Standards is twofold: (1) To serve as guidelines in the continued orderly development of the health care system in West Virginia in accordance with the Certificate of Need statute; and (2) To promote cost-effective alternatives to higher-cost services.

510.1. An existing hospital may apply to convert acute care beds to skilled nursing beds.

(a) There shall be a minimum of ten beds and a maximum of twenty-five beds per unit or per application.

(b) The hospital must convert at least one acute care bed into one medicare certified only skilled nursing care bed. The Authority may require a hospital to delicense up to and including three acute care beds for each medicare certified only skilled nursing bed.

(c) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of W. Va. Code, § 16-2D-3(d) for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in W. Va. Code, § 16-2D-2(ee).

(d) The hospital must use existing space for the medicare certified only skilled nursing care beds. Under no circumstances shall the hospital construct new space, lease or acquire additional space for the purpose of developing a skilled nursing care unit.

(e) The hospital must provide evidence that an acute care patient prior to transfer to the medicare skilled nursing care unit, will be notified of the existence of facilities with skilled nursing care beds which are located in or near the patient's county of residence and of the availability of admission to such nursing facility.

(f) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds converted shall be located in distinct-part, long-term care unit.

(g) The hospital must demonstrate a need for the number of medicare skilled nursing care beds proposed for the distinct-part unit. The

methodology for demonstrating need shall be quantitative and be directly related to the hospital proposing the conversion to skilled nursing care beds. The methodology shall be DRG based and involve 94 DRG's which have a high probability of resulting in skilled nursing services. A complete listing of the 94 DRG's is attached hereto. The first step is to determine a discharge base by finding the number of discharges with a length-of-stay of 8 days or more. A need projection can then be calculated by multiplying the number of discharges of 8 days or more times 15, the average length of stay for a skilled nursing unit. This product is divided by 365 days and again divided by .90 (average acceptable occupancy rate for a skilled nursing unit) to determine the projected need for skilled nursing beds which the hospital can demonstrate from its own patient data.

(h) A hospital with an existing skilled nursing care unit is not eligible to apply for additional skilled nursing care beds until the existing unit exceeds an aggregate average occupancy rate of 90% for the previous twelve months.

(i) A hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted pursuant to this rule.

**SKILLED NURSING UNIT DRG'S**

**FILED**

1991 JUN 27 PM 4:

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**DRG  
GROUP  
NUMBER**

**DESCRIPTION**

009	Spinal Disorders & Injuries
010	Nervous System Neoplasms With CC
012	Degenerative Nervous Neoplasms With CC
014	Specific Cerebrovascular Disorders Except TIA
018	Cranial & Peripheral Nerve Disorders With CC
024	Seizure & Headache Age >17 With CC
034	Other Disorders Of Nervous System With CC
044	Acute Major Eye Infections
075	Major Chest Procedures
078	Pulmonary Embolism
079	Respiratory Infections & Inflammations Age >17 With CC
082	Respiratory Neoplasms
083	Major Chest Trauma With CC
085	Pleural Effusion With CC
087	Pulmonary Edema & Respiratory Failure
088	Chronic Obstructive Pulmonary Disease
089	Simple Pneumonia & Pleurisy Age >17 With CC
094	Pneumothorax With CC
096	Bronchitis & Asthma Age >17 With CC
101	Other Respiratory System Diagnoses With CC
106	Cornary Bypass With Cardiac Cath
107	Cornary Bypass W/O Cardiac Cath
110	Major Cardiovascular Procedures With CC
113	Amputation For Circ System Disorders Except Upper Limb & Toe
115	Perm Cardiac Pacemaker Implant With Ami, Heart Failure or Shock
121	Circulatory Disorders With Ami & C.V. Comp. Disch. Alive
126	Acute & Subacute Endocarditis
127	Heart Failure & Shock
128	Deep Vein Thrombophlebitis
130	Peripheral Vascular Disorders With CC
132	Atherosclerosis With CC
134	Hypertension

**DRG  
GROUP  
NUMBER**

**DESCRIPTION**

135	Cardiac Congenital & Valvular Disorders Age >17 With CC
138	Cardiac Arrhythmia & Conduction Disorders With CC
140	Angina Pectoris
144	Other Circulatory System Diagnoses With CC
146	Rectal Resection With CC
148	Major Small & Large Bowel Procedures With CC
150	Peritoneal Adhesiolysis Age >69 And/Or CC
164	Appendectomy With Complicated Princ. Diag Age >69 /And/Or CC
172	Digestive Malignancy Age >69 And/Or CC
174	G.I. Hemorrhage Age >69 And/Or CC
179	Inflammatory Bowel Disease
180	G.I. Obstruction With CC
182	Esophagitis, Gastroent. & Misc. Digest. Disorders Age >17 With CC
188	Other Digestive System Diagnoses Ages >69 And/Or CC
191	Major Pancreas, Liver & Shunt Procedures With CC
195	Total Cholecystectomy W C.D.E. With CC
197	Total Cholecystectomy W/O C.D.E. With CC
203	Malignancy Of Hepatobiliary System Or Pancreas
204	Disorders Of Pancreas Except Malignancy
205	Disorders Of Liver Exc Malig. Cirr. Alc Hepa With CC
207	Disorders Of the Biliary Tract With CC
209	Major Joint And Limb Reattachment Procedures
210	Hip & Femur Procedures Except Major Joint Age >17 With CC
213	Amputations For Musculoskeletal System & Conn. Tissue Disorders
217	Wnd Debrid & Skn Grft Exc Hand, For Muscskeletal & Conn. Tiss. Dis.
221	Major Shoulder/Elbow Proc. Or Other Upper Extremity Proc. W CC
223	Upper Extremity Proc Exc Humerus + Hand Age >69 And/Or CC
233	Other Musculoskelet Sys & Conn Tiss O.R. Proc With CC
235	Fractures Of Femur
236	Fractures Of Hip & Pelvis
238	Osteomyelitis
239	Pathological Fractures & Musculoskeletal & Conn. Tiss. Malignancy
240	Connective Tissue Disorders With CC

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1991 JUN 27 PM 4:4

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**DRG  
GROUP  
NUMBER**

**DESCRIPTION**

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1991 JUN 27 PM 4: 4

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242	Septic Arthritis
244	Bone Diseases & Specific Arthropathies With CC
257	Total Mastectomy For Malignancy With CC
259	Subtotal Mastectomy For Malignancy With CC
263	Skin-Grafts And/Or Debrid Ulcer Or Cellulitis With CC
271	Skin Ulcers
272	Major Skin Disorders With CC
274	Malignant Breast Disorders With CC
277	Cellulitis Age >17 With CC
285	Amputation Of Lower Limb For Endocrine, Nutritional & Metabolic Dis.
294	Diabetes Age = >35
296	Nutritional & Misc. Metabolic Disorders With CC
300	Endocrine Disorders Age >69 And/Or CC
306	Prostatectomy With CC
310	Transurethral Procedures With CC
318	Kidney & Urinary Tract Neoplasms Age >17 With CC
320	Kidney & Urinary Tract Infections Age >17 With CC
331	Other Kidney & Urinary Tract Diagnoses Age >17 With CC
336	Transurethral Prostatectomy With CC
346	Malignancy, Male Reproductive System With CC
366	Malignancy, Female Reproductive System With CC
400	Lymphoma And Leukemia With Major O.R. Procedure
401	Lymphoma And Non-Acute Leukemia With Other O.R Proc With CC
403	Lymphoma And Non-Acute Leukemia With CC
416	Septicemia Age >17
423	Other Infectious & Parasitic Diseases Diagnoses
444	Traumatic Injury Age >17 With CC
449	Poisoning And Toxic Effects Of Drugs Age >69 And/Or CC
462	Rehabilitation

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
Help we can get)

July 1, 1991

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 1, 1991  
ADMINISTRATIVE LAW DIVISION

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

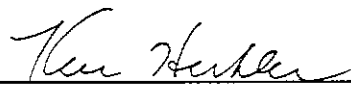
RULE: Amendments, Series 20 Conversion of Acute Care Beds to  
Skilled Nursing Beds

DATE RULE WAS ORIGINALLY FILED AS AN EMERGENCY RULE: April 23, 1991

DATE EMERGENCY AMENDMENT WAS FILED: June 27, 1991

DECISION NO. 39-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

  
KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
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JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 39-91)

AGENCY: Health Care Cost Review Authority  
RULE: New Rule, Series 20, Conversion of Acute Care Beds to Skilled Nursing Care Beds

ORIGINALLY FILED AS EMERGENCY RULE: April 23, 1991

FILED AS AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE: June 27, 1991

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed amendments to the above emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved. [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The HCCRA filed this emergency rule with supporting documents with the Secretary of State June 27, 1991 and with the LRMRC June 28, 1991.

par. 7 It is the determination of the Secretary of State that the HCCRA has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-2D-5(i) reads:

*(i) Notwithstanding the provisions of §16-2D-5(g) of this article and further notwithstanding the provisions of §16-2D-3(d) of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted. In converting beds, the hospital must convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care cost review authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed. The health care cost review authority shall adopt rules to implement this subsection.*

par. 9 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

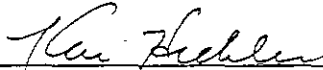
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the HCCRA are as follows:

HB 2194, effective March 20, 1991, requires the agency to promulgate rules to permit certificate of need review for hospitals to convert acute care beds to skilled nursing beds. The emergency amendment is necessary to bring the rule into conformity with existing procedure and requirements for certificate of need review. The overall effect is to streamline agency procedure and reduce costs to hospitals.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 39-91 or ERD 39-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_ FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 1, 1991  
ADMINISTRATIVE LAW DIVISION